

EYES UP!

Legal Issues - Drones in the Equine Industry

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KAPLAN KIRSCH ROCKWELL

Introduction



Development



Legislative Background

FAA Modernization and Reform Act of 2012 (FMRA)

- Integration of civil UAS into the National Airspace System (NAS)
- Phased approach

Legislative Background

FMRA, cont'd.

- Standards for operation and certification – airworthiness and safety
- Sense and avoid capability
- Standards for operators
- Registration and licensing – aircraft and remote pilot

Regulatory Development

Feb.25, 2015 – Notice of Proposed Rulemaking

June 28, 2016 – Final Rule

- 14 C.F.R. Part 107
- General, objective criteria and parameters
- In effect August 29, 2016

FAA Jurisdiction

Regulates the NAS

- Ensure safety of persons and property in the air and on the ground
- Prevent collisions between aircraft and other objects
- Ensure safe flight of civil aircraft in commerce
- Minimum standards – safe operation

State Law

Existing theories of tort, trespass, nuisance and invasion of privacy

State and local legislative activity restricting UAS use

Scope of federal preemption not yet defined
– brand new front for disputes

State Law

Boggs v. Merideth – U.S. District Court W.D. KY (Mar. 21, 2017)

- Drone shotgun case
- First case implicating property rights to airspace when drones involved
- Damages claimed for trespass to chattels
- No federal question jurisdiction – FAA NAS regulation not implicated

Current Regulatory Status

14 C.F.R. part 107

- Cannot fly beyond visual line of sight (BVLOS)
 - Operator responsible to sense and avoid
- Daytime operations
- Not above 400', max. speed 100 mph
- Drone must be registered
- Remote pilot must be certified

Operating Requirements

Never operate carelessly or recklessly

Silverton, CO

Feb. 2017

TIPS:

- Establish rules for drone operators at event
- Hold operator responsible for damages



Operating Requirements

No operations over people not directly involved in flight

Next FAA rule: operations over people/in populated areas

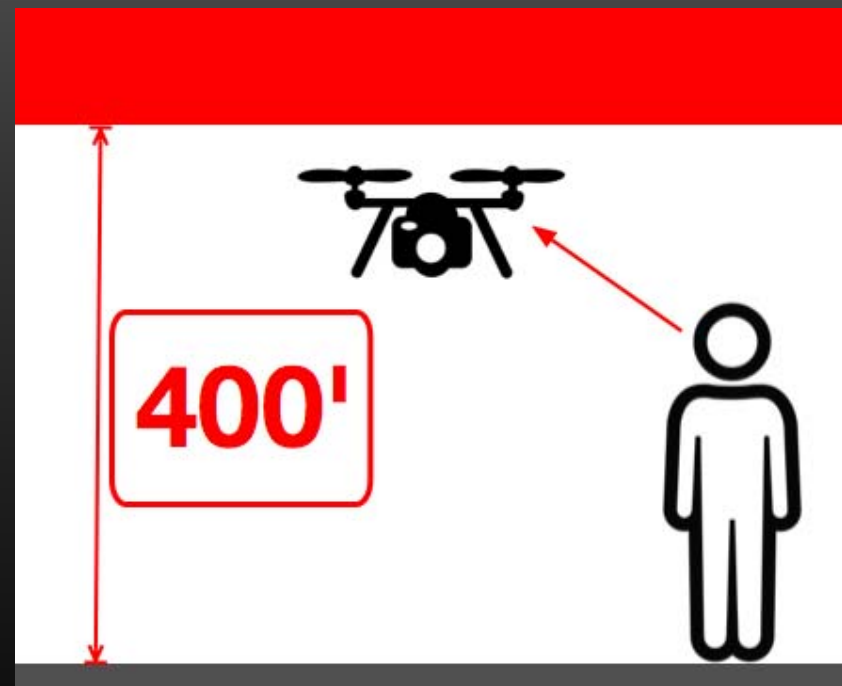


World Cup, Italy
Dec. 2015

Operating Requirements

No operations from a moving vehicle unless in a sparsely-populated area

Keep drone in sight without use of visual aids



Recreational Users

FMRA Section 336

- Aircraft must be registered with FAA
- No pilot certification
- Voluntary operating guidelines
- **TIP:** Require recreational drone users visiting your venue to sign assumption of liability

UAS Aircraft Requirements

- Between 0.5 and 55 pounds, including payload
- Must be registered with FAA
- NOTE: Communications failures the single biggest cause of drone crashes

Drones and Equine Activities

Full potential of UAS use still developing

Current uses:

- Facilities inspections
- Field/pasture monitoring and assessment
- Herd inspection/monitoring
- Training videography
- Event photography

Drones and Equine Activities



Unique risks:

- Reactions of horses to drones
- Potential injury if communication link lost or aircraft malfunctions and crashes

Kentucky Derby has banned drones since 2015

Drones and Equine Activities

Managing UAVs on your property/event:

- Call the shots – because you can
- Establish and publish rules governing UAS use – recreational and civil
- Require UAS users to sign waiver of claims and assumption of liability at minimum
- Specify where drones may and may not fly

Drones and Equine Activities

Managing UAVs on your property/event:

- Require all drone users to provide proof of UAS liability insurance
- Require all UAV users to provide remote pilot credentials (not required for recreational users)
- Sample UAV operating license – Appendix A to paper

Drones and Equine Activities

Contracting for UAS operations:

- Request copies:
 - Remote pilot certificate
 - Aircraft registration
 - Insurance
 - Any waivers operator has obtained (i.e., BVLOS, night time operations)

What's Next?

FAA rule – flights over people

Technical developments:

- Reliable BVLOS operation
- Sense and avoid capability

More drones in flight

More litigation

Questions?



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